In the High Court of Judicature at Madras

Dated: 03/02/2003

Coram

THE HON'BLE MR.JUSTICE P.SATHASIVAM

W.P.M.P.No. 2918 of 2003
and
W.P.M.P.No.2919 of 2003
and
W.V.M.P.Nos. 225, 226, 229 and 230 of 2003

In Writ Petition Nos. 2319 and 2320 of 2003

:ORDER

Tea Buyers' Association of Coimbatore have filed Writ Petition No. 2319/2003 seeking to issue a Writ of Declaration, declaring Clauses 2 (1), 4, 6, 7(2), 17, 21, 22, 23, 27 and 28 of Tea Marketing Control Order, 2003, issued by Ministry of Commerce, Union of India/first respondent herein and published in Gazette of India dated 01-01-2003 as arbitrary, violative of Articles 14 and 19 (1) (g) of the Constitution of India and ultra vires the Tea Act, 1953 in so far as the members of the peti tioner are concerned. The very same Association has filed another Writ Petition in W.P.No. 2320 of 2003, seeking to issue a Writ of Declaration, declaring Clauses 2 and 3 of the directives No. 12 (23)/CL/2002-03/4692, dated 06-01-2003, issued by Tea Boar d, Kolkata/second respondent herein under Clause 13 of Tea (Marketing) Control Order, 2003 pertaining to division of lots and proxy bidding as arbitrary and ultra vires the Tea Act, 1953 in so far as the members of the petitioner are concerned.

2. The petitioner Association filed W.P.M.P.No. 2918/2003 praying to stay the operation of Clauses 2 (1), 4, 6, 7 (2), 17, 21, 22, 23, 27 and 28 of Tea Marketing Control Order, 2003, issued by the first respondent under the Tea Act, 1953 in so far as the members of petitioner are concerned pending disposal of the writ petition.

3. In W.P.M.P.No. 2919/2003 they prayed for interim stay of operation of the Clauses 2 and 3 of the directives No. 12 (23)/CL/2002-03/4692 dated 06-01-2003 issued by the 2nd respondent under Clause 13 of Tea Marketing Control Order, 2003 pertaining to division of lots and proxy bidding under the Tea Act, 1953 in so far as the members of the petitioner are concerned pending disposal of the above writ petition.

4. While admitting both the writ petitions on 28-01-2003, this Court granted interim stay for a period of two weeks and ordered notice to the respondents returnable in two weeks. Pursuant to the notice, the first

respondent-Ministry of Co mmerce, New Delhi filed a counter affidavit in the stay applications and prayed for vacation of the same in view of the reasons stated therein.

5. The Special Officer, Tamil Nadu Small Tea Farmers, Industrial Co-operative Federation (in short "Indcoserve"), The Nilgiris and the United Planters' Association of Southern India, represented by its Secretary General were impleaded as re spondents 3 and 4 in the Writ Petitions as per the order of this Court dated 31-01-2003. They also filed W.V.M.P.Nos. 225, 226, 229 and 230 of 2003 for vacation of the interim order granted on 28-01-2003. In view of urgency, as pointed out, arguments w ere advanced in the stay and vacate stay petitions.

6. Inasmuch as for the present this Court is to dispose of the Miscellaneous Petitions, I shall refer the brief facts which are required for the same. According to Tea Buyers Association of Coimbatore (in short "Association"). The Parliam ent passed The Tea Act, 1953, and the object of the Act is to provide for the control by the Union of India of the tea industry, including the control, in pursuance of the International Agreement now in force, of the cultivation of tea in and of the expo rt from India and for that purpose establish a Tea Board and levy a duty of excise on tea produced in India. Section 4 of the Act enables the Central Government to establish the Tea Board which shall be a body corporate. The Tea Board consists of membe rs who represent the owners of tea estates and gardens and growers of tea, persons employed in the tea estate, manufacturers of tea, dealers including both exporters and internal traders in tea etc. Section 10 of the Act deals with the powers of the Tea Board. It shall be the duty of the Board to promote the development of the Tea industry under the control of the Central Government by such measures as it thinks fit. Among the measures the Tea Board may provide for the registering and the licensing o f manufacturers, brokers, tea waste dealers and persons engaged in the business of blending tea. Section 30 of the Tea Act deals with the power to control price and distribution of tea or tea waste. By virtue of the power under Section 30 (3) and (5) o f the Tea Act, the Tea Board issued the Tea Marketing Control Order, 1984. The said order contemplated among other items, the registration of the manufacturer of tea. Para 17 of the order dealt with the sale of tea through public auctions. As per para 17 of the order, every registered manufacturer shall sell not less than 75% or such higher percentage as may be specified from time to time by the Board of tea manufactured by him in a year through public tea auctions in India. On account of the low pri ce realisation by the growers, subsequent to the decontrol of tea auction sales, Tea Board appointed A.F. Ferguson and Company to conduct a study on the Primary Marketing of Tea in India including the system of public tea auctions. The expert body submi tted its recommendation suggesting a variety of auction reforms to arrest the drift that is taking place away from auctions and towards private sales subsequent to the liberalisation. Accepting the recommendation of A.F. Ferguson and Company report, the Tea Board issued the Tea Marketing Control Order, 2003 (hereinafter referred to as "TMCO, 2003"). However, while issuing TMCO, 2003, the Tea Board unnecessarily brought the buyers in the tea auction sales under the regulatory control of the Tea Board. T he Tea Act does not empower the Central Government or the Tea Board to determine as to what should be the

reasonable price of tea. There is no provision for price fixation in the Tea Act. However, the provisions contained in the TMCO, 2003 for determina tion of reasonable price of tea is beyond the scope of the Tea Act. Though a method has been laid down for realization of reasonable price of tea sold by the manufacturers through broker, no such provision has been made in respect of tea sold by the manu facturers to buyers directly. This amounts to unreasonable discrimination. TMCO, 2003 failed to take note of the reason for the amendment of clause 17 of the 1984 Order after the liberalisation in the year 2001. With these averments, the Tea Buyers As sociation, Coimbatore have preferred the above writ petitions.

7. The case of the respondents 1 and 2 as seen from the counter affidavit of the Under Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi is briefly stated hereunder. Pursuant to Section 30 of the Tea Act, cl ause 30 of the impugned Control Order provides the mechanism for determining the reasonable price of tea leaves payable to the tea growers. Therefore, the Government is vested with the power pursuant to the said provision to fix the price including mini mum and maximum price. The two terms enumerated as buyer and manufacturer are two different categories. It cannot be construed that buyer and manufacturer is the same, in view of the fact that the manufacturer is a person who sales the product, includin g value added products, whereas the buyer buys such product. There is no question of a person who manufactures being also a buyer unless a manufacturer captively consumes tea for such value addition. Activities and functions as manufacturers and buyers are distinct and separate even in such captive consumption cases. Instead of making a fixed percentage of tea to be directed to be sold in public auction, the power is reserved in the Government under TMCO, 1984 as amended in 2001, as well as in the im pugned TMCO, 2003, that it will be such percentage as the Government may deem fit. As per TMCO, 2003, the buyers are also to be registered. This was the only class of persons connected with the tea industry who had been left out and have now been brought into the fold of the Control Order. By having the buyers also have to be registered and fixing a particular quantity to be compulsory bought by buyers, such a situation by which the reasonable prices which are denied both to the manufacturers and consum ers can be retrieved. The primary buyer is the buyer who participates in the auction. The term buyer will not include the secondary buyers for the purpose of the term 'buyer' in the Auction Rules. The sale by division of lots and proxy bidding are cont rary to the principles of competitive bidding in the system of public auction. Division of lots should be viewed from the fundamental auction principle stand point namely that all buyers must put in the winning bid in any auction system. As regards prox y bidding the fundamental principle of a public auction is that a buyer must be present in the auction room to make his bid so that effectively there is more competition in the auction room. Proxy bidding gives the carrier of the proxy the benefit of bo th aggregation of demand as well as the safety provided by an assured buying power without any associated risk. The object of the TMCO 2003 is to eliminate such unfair advantage to any section of the trade following a study by M/s. A.F. Ferguson and Com pany, an expert organization in the field of marketing. Besides division of lots and proxy bidding encourage collusive entry-deterring and predatory behaviour, apart from creation of buyers' cartels. By the grant of interim stay even for the

limited pe riod, places the impugned control order out of enforcement by the Board and in the interregnum there is no question of the Board acting under the earlier control order of 1984 which has already been superseded. Therefore, the resultant position is that the Board is now left helpless and its actions bereft of any authority. The plantation workers, the small growers, for that matter of fact even every grower apart from buyers and the consumers, will be put to serious hardship and inconvenience in that n o effective control can now be exercised by the Board. There is an Association, which is the licensed auction organizer, of which the member of the petitioner herein are a part. The said Association has already passed a resolution to adopt and abide by all the directions contained in the impugned control order. With these averments, reserving their right to file a detailed counter affidavit in the main writ petitions, respondents 1 and 2 prayed for dismissal of the stay applications.

8. The Special Officer of the Indcoserve, third respondent has filed an affidavit highlighting their stand. It is stated that though the writ petitions have been filed in the capacity of tea buyers association of Coimbatore, there was neit her any authorization by the managing committee nor any resolution by the executive committee authorizing the writ petitioner to file the above writ petitions. Their organization has got a member of about 20,000 small tea growers. The tea procured by T he Indcoserve is supplied to the people of Tamil Nadu through the Public Distribution System by which it also gives remunerative prices to more than 60000 small tea growers by way of additional purchase of Made tea from the auction market. Their organiza tion is the largest co-operative tea unit in Asia which produces 15 millions kilograms of tea per annum. Since the tea growers in the country were not getting suitable prices for their products, on receipt of various representations, TMCO, 2003 was passe d on 1-1-2003. The directives were issued only for the welfare of the people at large and also to remove the irregularities in the auction of tea and after a fair and reasonable price to tea growers as well as the consumer public at large. They also pra yed for vacation of the interim order granted on 28-1-2003.

9. The Secretary General of the United Planters' Association of Southern India, 4th respondent has filed an affidavit reiterating the stand taken by respondents 1 and 2.

10. In the light of the above pleadings, I have heard Mrs. Nalini Chidambaram, learned senior counsel for petitioner in both the W.P.M.Ps.; Mr. V.T. Gopalan, learned Additional Solicitor General, for respondents 1 and 2; Mr. G. Masilamani, l earned senior counsel for the impleaded third respondent; and Mr. S. Natarajan, learned counsel for the impleaded fourth respondent.

11. The only point for consideration in these petitions is whether the petitioner Association has made out a case for staying the operation of certain clauses in the TMCO, 2003, issued by the first respondent and clauses 2 and 3 of the dire ctives dated 06-01-2003 issued by the second respondent?

12. The petitioner Association is aggrieved by Clauses 2(1), 4, 6, 7(2), 17, 21, 22, 23, 27 and 28 of TMCO, 2003 and also Clauses 2 and 3 of the directives dated 6-1-2003, issued under clause 13 of TMCO, 2003 pertaining to sale by divisio n of lots and proxy bidding under the Tea Act, 1953 (hereinafter referred to as "the Act"). During the course of argument, Mrs. Nalini Chidambaram has informed this Court that the petitioners are giving up the challenge relating to sub-clauses 2 (1) an d 21 of TMCO, 2003. There is no dispute that the Parliament by virtue of Entry 33 of List III, VII Schedule to the Constitution of India, enacted The Tea Act, 1953 to take under its control the tea industry. Pursuant to the power under Section 4, the C entral Government established the Tea Board, 2nd respondent herein. The Board consists of members who represent the owners of tea estates and gardens and growers of tea, persons employed in tea estates and gardens, manufacturers of tea, dealers includin g both exporters and internal traders of tea and consumers, etc. Section 10 of the Act defines functions of the Board. For the present, we are concerned with Section 30 of the Act which gives power to the Central Government to control price and distrib ution of tea or tea waste. Section 30 reads as under:

"Section 30. Power to control price and distribution of tea or tea waste.-
(1) The Central Government may, by order notified in the Official Gazette, fix in respect of tea of any description specified therein-
(a) the maximum price or the minimum price or the maximum and minimum prices which may be charged by a grower of tea, manufacturer or dealer, wholesale or retail, whether for the Indian market or for export;
(b) the maximum quantity which may in one transaction be sold to any person.

(2) xx xx xx

(3) The Central Government may, by general or special order-
(a) prohibit the disposal of tea or tea waste except in such circumstances and under such conditions as may be specified in the order;
(b) direct any person growing, manufacturing or holding in stock tea or tea waste to sell the whole or a part of such tea or tea waste so grown or manufactured during any specified period, or to sell the whole or a part of the tea or tea waste so held in stock, to such person or class of persons and in such circumstances as may be specified in the order;
(c) regulate by licences, permits or otherwise the production, storage, transport or distribution of tea or tea waste.

(4) xx xx xx

(5) Without prejudice to the generality of the power conferred by sub-sections (1) and (3), any order made thereunder may provide-
(a) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, tea or tea waste to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such in formation relating thereto as may be specified in the order;
(b) for such other matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorized to make such search, of tea or tea waste in respect of which such person has

reason to be lieve that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents and the charging of fees therefore."

By pointing out the expression "manufacturer", as defined in Section 3 (i) and Section 30 (3) and (5) of the Act, Mrs. Nalini Chidambaram, learned senior counsel for the petitioner Association, would contend that the tea industry as contemplated by the T ea Act includes the growers and manufacturers of tea and not those who are engaged in the manufacture and process of value added products of tea. According to her, the buyers who convert the tea into the value added products of tea cannot be brought wit hin the purview of the Tea Act through TMCO, 2003. She also contended that there is no provision in the Act for exercising any control over the buyers of tea and over the manufacturers or producers of the value added products of tea. She points out tha t all the provisions contained in the TMCO, 2003 relating to registration of buyers of tea, submissions of accounts, returns, etc., by the buyers of tea are beyond the scope of the Act. Even otherwise, according to the learned senior counsel, those prov isions will be mis-used and subject the buyers to unnecessary harassment. After going through the relevant provisions, particularly Section 30 of the Act and the various clauses in the TMCO, 2003 as well as the argument of Mr. V.T. Gopalan, learned Addi tional Solicitor General, for respondents 1 and 2; Mr. G. Masilamani, learned senior counsel and Mr. S. Natarajan, learned counsel for respondents 3 and 4 respectively, I am unable to accept the contentions of Mrs. Nalini Chidambaram, learned senior coun sel for the petitioner Association, for the following reasons. It is not disputed that in exercise of the powers conferred by sub-Sections (3) and (5) of Section 30 of the Tea Act, 1953 and in supersession of The Tea (Marketing) Control Order, 1984, the Central Government made the present Order, namely, TMCO, 2003. Among various clauses, for the present we are concerned with clause 30 of the TMCO, 2003, which speaks about determination of reasonable price and its compliance. Pursuant to clause (a) to sub-section (1) of Section 30 of the Tea Act, clause 30 of TMCO, 2003 provides the mechanism for determining the reasonable price of tea leaves payable to the tea growers. The said provision in the Tea Act gives power to the Central Government to fix t he price including minimum and maximum price. As rightly pointed out by the respondents, pursuant to the said power, the Central Government has chosen to make an enabling provision to determine a formula for fixation of the reasonable price of tea leave s, being the raw material used for manufacture of tea and that only to the tea leaf supplied by tea growers. Admittedly, clause 30 of TMCO, 2003 is not under challenge in these writ petitions. Though it is contended that the buyers have been specifical ly excluded in any of the sub-sections of Section 30 of the Tea Act and that they cannot be controlled/regulated by the respondents, in the light of the various clauses in sub-sections (1) (3) and (5) of Section 30 of the Act, I am in agreement with the argument of the learned Additional Solicitor General that the respondents 1 and 2 are empowered to regulate the affairs of all the persons concerned in tea and tea waste including the buyers. As rightly said, sub-section (1) of Section 30 of the Act cov ers grower of tea, manufacturer or dealer, wholesale or retail, whether for the Indian market or for export. Likewise, sub-section 3 (c) of Section 30 of the Act empowers the Central Government either by general or by special order to regulate by licenc es,

permits or otherwise the production, storage, transport or distribution of tea or tea waste. Sub-section (5) makes it clear that without prejudice to the power conferred by sub-sections (1) and (3), the Central Government may pass an order requirin g persons engaged in the production, supply or distribution of, or trade and commerce in, tea or tea waste to maintain and produce for inspection books, accounts and records relating to their business. All these provisions make it clear that the Centra l Government is empowered to issue orders and regulate the activities of growers, manufacturers, dealers (wholesale or retail), local sale or for export and control the persons engaged in production, supply and distribution connecting with the tea or tea waste. Mr. G. Masilamani, learned senior counsel appearing for the third respondent has also brought to my notice the meaning for the word "dealer" from various Judicial Dictionaries. After going through the Shorter Oxford English Dictionary; P. Raman atha Aiyar's The Law Lexicon; and Black's Law Dictionary, it is clear that the word "dealer" means a person engaged in the business of purchase, sale or storage for sale. In the popular sense, it means one who buys to sell. To put it clear, the term "de aler" means any engaged in the business of buying and selling goods for his own account, through a broker or otherwise. In view of the statutory provisions, namely, Section 30 (1), (3) and (5) of the Tea Act, I am prima facie satisfied that the responde nts 1 and 2 are empowered to control and regulate the buyers who are dealing in tea in any form.

13. A perusal of various clauses in TMCO, 2003 shows that the buyers are also to be registered. When all other classes of persons connected with the tea industry are asked to register and brought under the Act, there is no reason to exclud e the buyers as claimed by the learned senior counsel for the petitioner. As rightly contended by the learned Additional Solicitor General, by the impugned Control Order, buyers also are made accountable. It is demonstrated before me that the price of tea at the auction have crashed by 20 to 40 per cent of what it used to be in the years prior to 1999. It was found that even though the prices have crashed at the auction platforms, the consumers are not in any way benefited and that such reduction of prices have not reached them through the buyers. It is also explained that the buyers who could also buy tea in the open market i.e., whatever remaining after the percentage of tea fixed, if any, for auctions are not offering fair price with the result that the manufacturers are taken for a ride. By having the buyers also to be registered and fixing a particular quantity to be compulsorily bought by buyers, such a situation by which the reasonable prices which are denied both to the manufacturers and consumers can be retrieved. It is also demonstrated that the buyers form a very important and significant class who are really in the background, have been brought forth so that the influence that they seek to bear in the auctions indirectly are avoided besides the formation of syndicates. By causing the buyer also to be registered, they are obligated to file their returns so that the Government get a clear picture of the market conditions by correlating the sale in the auctions, sale otherwise than in the auction, the demand as evidenced in their returns etc., so that the proper percentage of tea prescribed to be sold in public auctions and otherwise than in the public auctions can be correctly determined by the

Central Government. Further, the fluct uations in the prices and the reasonableness of the margin between the primary sales and the sales in retail could also be ascertained for suitable policy intervention, including the fixing of the maximum and minimum prices for all categories of persons involved in the tea industry, in wholesale or in retail, whether in the Indian market or for export, as provided for under Section 30 of the Tea Act.

14. Learned Additional Solicitor General has also demonstrated before me that the members of the petitioner Association are part of Tea Trade Association which consists of buyers, sellers and dealers. It is also demonstrated before me th at 80 per cent of the members are not aggrieved by the control orders. This is evident from the information furnished by respondents 3 and 4. I have already referred to the fact that the newly impleaded third respondent is a co-operative body under the control of the Tamil Nadu State Government and contains 20,000 small tea growers. They informed to this Court that for the past few years the tea growers in the country, particularly in the State were not getting suitable prices for their products and they constrained to sell the same at very low price than their cost price. At the same time the consumers were buying the tea at an exorbitant rate. The third respondent demonstrated before me that the directives issued in TMCO, 2003 were only for the welfare of the people at large. According to them, the directives have been introduced to remove the irregularities in the auction of tea and offered a fair and reasonable price to the tea growers as well as the consumer public at large.

15. The newly impleaded 4th respondent United Planters Association of Southern India, after pointing out the details such as wages, price and cost of production and continuous fall in tea price from 1988 to 2002, contended that considering the serious financial crisis in the tea industry, the Central Government had intervened and passed TMCO-2003 with a view to reforming the public auction system in the hope that this will lead to an improvement in the tea prices. The 4th respondent has a lso asserted that their members are the major registered manufacturers in all the 3 auction centres in South India, including Coimbatore and that their interests are adversely affected by the interim stay granted by this Court.

16. With regard to the contentions relating to division of lots and proxy bidding, it is explained before me that sale by division of lots and proxy bidding are contrary to the principles of competitive bidding in the system of public aucti on. Division of lots has the same impact as if all buyers were to get together with one buyer and give him all the clout required to manipulate the market. As rightly argued, it is also possible that one buyer could set a price for the day and all other s could share the lots, thereby rigging the price to the disadvantage of the seller. As rightly stated, the buyer must be present in the auction room to make his bid so that effectively there is more competition in the auction room. As rightly argued by the learned Additional Solicitor General, the object of the TMCO, 2000 is to eliminate such unfair advantage to any section of the trade. I have already referred to about the study and report given by M/s. A.F. Ferguson and Company, an expert organizati on in the field of marketing. As rightly contended on the side of the respondents, besides division of lots and proxy

bidding encourage collusive entry-deterring and predatory behaviour, apart from creation of buyers' cartels. All these evils are elimin ated in TMCO, 2003.

17. Learned Additional Solicitor General, by relying on a decision in BAVESH D. PARISH v. UNION OF INDIA, reported in 2000 (III) CTC 178, would contend that the interim order staying the various clauses of the Control Order cannot be con tinued. In the said decision, the Hon'ble Supreme Court, after noticing that Section 45-S of the Reserve Bank of India Act, 1934 has been challenged in various High Courts and that few of them had granted the stay of provision of Section 45-S of the sai d Act, has observed as follows: (para 30 and 31)

"30??? When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change then the Courts must bear in mind that unless the provision is manifestly unjust or glaringly unc onstitutional, the courts must show judicial restrain in staying the applicability of the same. Merely because a statute comes up for examination and some arguable points is raised, which persuades the courts to consider the controversy, the legislative will, should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, t herefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic gr owth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.

31. While the courts should not abrogate its duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion does not abrogate from the function of weighing the overwhelming public in terest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution a gainst intervening at the interlocutory stage in matters of economic reforms and fiscal statutes."

18. It is also relevant to refer another decision of the Supreme Court in BALCO EMPLOYEES' UNION (REGD.) v. UNION OF INDIA, reported in (2002) 2 Supreme Court Cases 333 wherein it was held that unless policy decision/economic decision is con trary to any statutory provision or the Constitution, Court cannot interfere with it. It was further held that Court cannot examine relative merits of different economic policies and cannot strike down a policy merely on ground that another policy would have been fairer and better.

19. It is equally relevant to refer another Constitution Bench judgment of the Supreme Court in R.K. GARG v. UNION OF INDIA, reported in A.I.R. 1981 Supreme Court 2138, wherein Their Lordships have held that while considering the constitutiona l validity of a statute said to be violative of Article 14,

it is necessary to bear in mind certain well established principles which have been evolved by the Courts as rules of guidance in discharge of its constitutional function of judicial review. As per the conclusion of Their Lordships, the first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. Another rule as pointed out by them is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc.

20. I have already referred to the relevant provisions from the Tea Act which enables the Government to pass the impugned TMCO, 2003. I have also referred to the factual details furnished by respondents 3 and 4, namely, affecting of financi al stability of plantation due to continuous fall in prices, erosion of the reserves and liquidity of the plantation and reduction of their borrowing capacity, their inability to get even the working capital from banks, representations to the Central Gov ernment for intervention and the reason and purpose for passing the impugned order. In such circumstances, in the light of the directions/observations of the Supreme Court in the decisions referred to above, I am of the view that mere raising of some ar guable points is not sufficient to stay or suspend the impugned control order TMCO, 2003, since presumption is always in favour of Constitutional validity and there is no valid and acceptable ground for interference by this Court at the interlocutory sta ge.

21. Learned Additional Solicitor General has also brought to my notice that the present impugned order-TMCO, 2003 has been passed in supersession of TMCO, 1984 and if the stay order continues, the second respondent cannot function and attend day-to-day affairs. The learned Additional Solicitor General is right in his submission that the impugned order is in supersession of the TMCO, 1984 except as respect things done or omitted to have been done before such supersession. It is settled law t hat under the doctrine of superseding any legislation or any delegated law, while superseding the earlier laws or notifications or rules, nothing is left of the old. In the light of said principle, it is stated that the grant of interim stay even for th e limited period places the impugned control order out of enforcement by the Board and in the interregnum there is no question of the Board acting under the earlier Control Order of 1984 which has already been superseded. According to him, the resultant position is that the Board is now left helpless and its actions bereft of any authority. In view of the fact that the present order has been passed in supersession of the Tea (Marketing) Control Order, 1984, I am satisfied that the Tea Board and other bodies working under it cannot function by virtue of the interim order though granted for a limited period, viz., two weeks. On this ground also, as rightly contended, the same has to be vacated.

22. Though the Tea Buyers' Association of Coimbatore through its Chairman has filed the above writ petitions and enclosed certificate of incorporation and list of members, it was brought to my notice that leading members of the petitioner Association are members of Tea Trade Association and they already consented for proper implementation of the TMCO, 2003. Learned Additional Solicitor General and the other counsel appearing for respondents 3 and 4 has

brought to my notice that most of t he members have not consented for filing the above writ petitions. Though the Chairman and Managing Director, Indcoserve is shown as one of the members of the Tea Buyers' Association who filed the above writ petitions, the Special Officer of the Indcose rve has filed an affidavit stating that there was neither any specific authorisation by the managing committee nor any resolution by the executive committee authorising the writ petitioner to file the above writ petition. I have already referred to the assertion of the third respondent that Indcoserve consists of 20,000 small tea growers and it is their specific case that the impugned order issued by the respondents 1 and 2 are for the welfare of the members of their Society. It is also brought to my notice that another trader-M/s Balmer Lawrie and Company Limited, Kolkatta, shown in the list of Tea Buyers Association-vide page 5 of the typed-set of papers filed by the petitioner, is the Government of India Organization supplying tea for Defence Forc es has consented for the impugned order-TMCO, 2003 and is not supporting the stand taken by the petitioner Association. Though Mrs. Nalini Chidambaram, learned counsel for the petitioner Association has brought to my notice the Memorandum of Articles of Association of Buyers' Association of Coimbatore and powers of the Managing Committee, which include to challenge the legislation, and Control Orders before any forum, the fact remains that the majority of the members are not in favour of the Associatio n in questioning the Control Order. I have already referred to their stand which is supporting the TMCO, 2003 and highlighted that the said order is beneficial to them and to their members.

23. In the light of what is stated above, prima facie I am satisfied that the impugned TMCO, 2003 was issued under Section 30 of the Tea Act, 1953 which came into force from 1-1-2003 for the purpose of regulating the sale of tea by public auctions as well as for streamlining the channels of supply and distribution of tea with a view to remove certain distortions and malpractices which had crept in into the auction system so that tea is sold in a healthy environment of competition, thereby enabling the producers and primary manufacturers of tea remunerative fair prices. I am also prima facie satisfied that the Central Government is well within their powers to issue control orders covering the buyers who involve in the buying and selling o f tea, hence they are liable to adhere to the directions/regulations in terms of the TMCO, 2003. I am also satisfied that even if there is arguable points, with reference to the impugned Control Order, on this ground the same cannot be interfered at the interlocutory stage, particularly when the order has been brought to ameliorate the grievance expressed by all section of persons dealing in tea and tea waste. I am also satisfied that by continuance of stay a serious void or vacuum has been created wi th regard to the auctions since while the pivotal provisions of TMCO, 2003 have been excluded, more particularly when TMCO, 1984 stands superseded. It is also demonstrated before me that continuance of stay will create serious uncertainties and distortions in the auctions and there is likelihood of further serious fall in tea prices, which will not only affect the interest of the factories and the plantations concerned, but also the large labour force employed in these plantations and factories . Accordingly, the interim stay granted on 28-01-2003 is vacated. Net result, W.P.M.P.Nos. 2918 and 2919/2003 are dismissed. W.V.M.P.Nos. 225, 226, 229 and 230/2003 are allowed.

R.B.

Index:- Yes.
Internet:- Yes.